IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 3048 OF 1996.

M/s.Satish Dalal & Co.
a firm registered under the
Indian Partnership Act, 1932,
and carrying on bsuiness at
12, Dadi Seth House, 44, Cawasji
Patel Street, Bombay 400 001. ... Plaintiffs.

Versus.

Shree Swastik Steels Pvt.Ltd.
a company incorporated under the
provisions of the Companies Act,
1956 and having its registered
office at 1039-E, Rajaram Road,
Kolhapur 416 001. ... Defendants.

Shri S.J.Purohit i/by M/s.Purohit & Co. for the Plaintiffs.

None for the Defendants.

CORAM : ABHAY S.OKA, J.

DATED : 26th October, 2007.

ORDER JUDGMENT.:

1. The suit is kept under the caption "For want of written statement" as the Defendants have failed to file written statement.

2. The Plaintiffs have filed the suit for recovery of a sum of Rs.7,34,905/- together with further interest on Rs.4,14,750/- at the rate of 24% per annum from the date of institution of the suit till realisation.

3. According to the case of the Plaintiffs they

agreed to sell iron steel melting scrap on high seas basis by transferring the bill of lading to the Defendants. According to the case of the Plaintiffs, it was agreed that the customs duty or any other levy on the goods shall be paid by the Defendants along with sales tax, octroi and other charges. Even charges of clearance were to be borne by the Defendants. The Plaintiffs served invoice dated 28th July 1993 for a sum of Rs.3,08,352/-to the Defendants.

4. The Plaintiffs delivered the bill of lading and shipping documents for the purpose of clearing. The said material and goods under the said documents were received by the Defendants. According to the Plaintiffs, the Defendants did not raise any dispute regarding the delivery of the goods.

5. According to the case of the Plaintiffs they had cleared the goods on behalf of the Defendants through M/s.International Shipping and Trading Co. by paying customs duty. According to the case of the Plaintiffs, the Defendants failed to pay the sum of Rs.53,559/- being the amount of wharfage and a sum of Rs.78,839/- being the charges payable to M/s.National Shipping and Trading Co. A reference has been made to the correspondence made by the Plaintiffs calling upon the Defendants to pay the outstanding amounts with interest.

As the amount was not paid the present suit has been filed.

6. Today the learned Counsel for the Plaintiffs has tendered an affidavit of Shri K.D.Dalal for proving the claim of the Plaintiffs in the suit. The said affidavit is taken on record and marked "X" for identification. He has also tendered on record compilation of the original documents. The said compilation is marked "X" (Collectively) for identification.

7. I have perused the affidavit and the original documents. The affidavit and the original documents establish that the goods under the bill of lading and shipping document have been duly received by the Defendants. The Plaintiffs have produced bill in the sum of Rs.78,839/- issued by the International Shipping and Trading Co. The Plaintiffs have also produced office copy of the invoice in the sum of Rs.3,08,352/-, office copy of the Advocate’s letters dated 8th August 1995 and 8th January 1996 along with acknowledgement and the Defendants’ letter dated 8th January 1996 have been produced on record. The original reply dated 17th January 1996 sent by the Defendants is also produced on record. The said reply shows that the Defendants did not dispute the assertions made in the Advocate’s letter dated 8th January 1996. The claim of the Plaintiffs of

wharfage charges in the sum of Rs.53,559/-by the Plaintiffs to the Clearing and Forwarding Agents.

8. In view of the affidavit and the documents, the claim of the Plaintiffs has been duly proved. As stated earlier, written statement has not been filed by the Defendants.

9. The Plaintiffs have prayed for further interest at the rate of 34% per annum. Considering the facts and circumstances of the case, further interest deserves to be granted at the rate of 18% per annum. Hence the suit is decreed in terms of prayer clause (a) with modification that further interest will be payable at the rate of 18% per annum on the principal amount of Rs.4,40,750/- from the date of institution of the suit till realisation or payment.

10. The Plaintiffs will be entitled to refund of Court fees, if any, as per the Rules. Certificate copy is expedited.

Judge.